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6 Attorneys for Defendants,
ERICA L. BRACHFELD and ERICA L. BRACHFELD,
7 A.P.C. erroneously sued as LAW OFFICES OF
BRACHFELD & ASSOCIATES, P.C.
8

9 UNITED STATES DISTRICT COURT
10 FOR THE SOUTHERN DISTRICT OF CALIFORNIA

11	MERCY MESIANO,)	CASE NO. 09 CV 1046 MMA BLM
12	Plaintiff,)	
13	vs.)	DEFENDANT ERICA L. BRACHFELD'S
14	ERICA L. BRACHFELD AND LAW)	ANSWER TO COMPLAINT
15	OFFICES OF BRACHFELD &)	
16	ASSOCIATES, P.C.)	
	Defendant.)	

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18 **COMES NOW** Defendant, ERICA L. BRACHFELD ("Defendant"), appearing for herself
19 and for no other person, firm or entity, files her Answer to the Complaint of Plaintiff, MERCY
20 MESIANO ("Plaintiff"), an individual, by admitting, denying and alleging as follows:

- 21 1. Answering Paragraph 1 of the Complaint, the allegations set forth are conclusions
22 of law and therefore, no response is required.
- 23 2. Answering Paragraph 2 of the Complaint, the allegations set forth are conclusions
24 of law and therefore, no response is required.
- 25 3. Answering Paragraph 3 of the Complaint, Defendant admits that Plaintiff filed this
26 action against Defendant. Defendant denies the remaining allegations therein.
- 27 4. Answering Paragraph 4 of the Complaint, Defendant denies each and every
28 allegation therein.

1 5. Answering Paragraph 5 of the Complaint, Defendant denies each and every
2 allegation therein.

3 6. Answering Paragraph 6 of the Complaint, Defendant admits that the United States
4 District Court generally has jurisdiction over claims arising under 15 U.S.C. § 1692, et seq., but
5 denies that Plaintiff has any such claim herein.

6 7. Answering Paragraph 7 of the Complaint, Defendant denies each and every
7 allegation therein.

8 8. Answering Paragraph 8 of the Complaint, Defendant denies each and every
9 allegation therein.

10 9. Answering Paragraph 9 of the Complaint, Defendant admits that generally venue
11 would be proper if Plaintiff had a valid claim, but denies that Plaintiff has any claim herein.

12 10. Answering Paragraph 10 of the Complaint, Defendant is without knowledge or
13 information sufficient to form a belief as to the truth of Plaintiff's allegations, and, on that basis,
14 denies each and every allegation therein.

15 11. Answering Paragraph 11 of the Complaint, Defendant admits she has an office
16 located in California.

17 12. Answering Paragraph 12 of the Complaint, Defendant is without knowledge or
18 information sufficient to form a belief as to the truth of Plaintiff's allegations, and, on that basis,
19 denies each and every allegation therein.

20 13. Answering Paragraph 13 of the Complaint, Defendant admits each and every
21 allegation therein.

22 14. Answering Paragraph 14 of the Complaint, Defendant is without knowledge or
23 information sufficient to form a belief as to the truth of Plaintiff's allegations, and, on that basis,
24 denies each and every allegation therein.

25 15. Answering Paragraph 15 of the Complaint, Defendant admits each and every
26 allegation therein.

27 16. Answering Paragraph 16 of the Complaint, Defendant is without knowledge or
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1 information sufficient to form a belief as to the truth of Plaintiff's allegations, and, on that basis,
2 denies each and every allegation therein.

3 17. Answering Paragraph 17 of the Complaint, Defendant is without knowledge or
4 information sufficient to form a belief as to the truth of Plaintiff's allegations, and, on that basis,
5 denies each and every allegation therein.

6 18. Answering Paragraph 18 of the Complaint, Defendant admits each and every
7 allegation therein.

8 19. Answering Paragraph 19 of the Complaint, Defendant admits each and every
9 allegation therein.

10 20. Answering Paragraph 20 of the Complaint, Defendant is without knowledge or
11 information sufficient to form a belief as to the truth of Plaintiff's allegations, and, on that basis,
12 denies each and every allegation therein.

13 21. Answering Paragraph 21 of the Complaint, Defendant is without knowledge or
14 information sufficient to form a belief as to the truth of Plaintiff's allegations, and, on that basis,
15 denies each and every allegation therein.

16 22. Answering Paragraph 22 of the Complaint, Defendant admits each and every
17 allegation therein.

18 23. Answering Paragraph 23 of the Complaint, Defendant admits each and every
19 allegations therein.

20 24. Answering Paragraph 24 of the Complaint, Defendant admits Erica L. Brachfeld,
21 APC filed a lawsuit against Plaintiff.

22 25. Answering Paragraph 25 of the Complaint, Defendant denies each and every
23 allegation therein.

24 26. Answering Paragraph 26 of the Complaint, Defendant denies each and every
25 allegation therein.

26 27. Answering Paragraph 27 of the Complaint, Defendant denies each and every
27 allegation therein.

1 28. Answering Paragraph 28 of the Complaint, Defendant denies each and every
2 allegation therein.

3 29. Answering Paragraph 29 of the Complaint, Defendant hereby incorporates all of the
4 above paragraphs of this Answer as though fully stated herein.

5 30. Answering Paragraph 30 of the Complaint, Defendant denies each and every
6 allegation therein.

7 31. Answering Paragraph 31 of the Complaint, Defendant denies Plaintiff is entitled to
8 the relief requested.

9 32. Answering Paragraph 33 of the Complaint, Defendant hereby incorporates all of the
10 above paragraphs of this Answer as though fully stated herein.

11 33. Answering Paragraph 33 of the Complaint, Defendant denies each and every
12 allegation therein.

13 34. Answering Paragraph 34 of the Complaint, Defendant denies Plaintiff is entitled to
14 the relief requested.

15 35. Answering Paragraph 35 of the Complaint, Defendant denies Plaintiff is entitled to
16 the relief requested.

17 36. Answering Paragraph 36 of the Complaint, Defendant denies Plaintiff is entitled to
18 the relief requested.

19 37. Answering Paragraph 37 of the Complaint, Defendant denies Plaintiff is entitled to
20 the relief requested.

21 38. Answering Paragraph 38 of the Complaint, Defendant denies Plaintiff is entitled to
22 the relief requested.

23 39. Answering Paragraph 39 of the Complaint, Defendant denies Plaintiff is entitled to
24 the relief requested.

25 40. Answering Paragraph 40 of the Complaint, Defendant denies Plaintiff is entitled to
26 the relief requested.

27 41. Answering Paragraph 41 of the Complaint, no response is required.
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FIRST AFFIRMATIVE DEFENSE

42. As a separate, affirmative defense, Defendant alleges that the Complaint, and each and every purported cause of action contained therein, fails to state facts sufficient to constitute a cause of action.

SECOND AFFIRMATIVE DEFENSE

43. As a separate, affirmative defense, Defendant alleges that the alleged actions of defendants were proper and did not violate any provisions of 15 U.S.C. § 1692 et. seq.

THIRD AFFIRMATIVE DEFENSE

44. As a separate, affirmative defense, Defendant alleges that at all times mentioned in the Complaint, Defendant acted lawfully and within her legal rights, with a good faith belief in the exercise of that right, and in the furtherance of a legitimate business purpose. Further, Defendant acted in good faith in the honest belief that the acts, conduct and communications, if any, of the Defendant was justified under the circumstances based on information reasonably available to this answering Defendant.

FOURTH AFFIRMATIVE DEFENSE

45. As a separate, affirmative defense, Defendant alleges that the alleged actions of the Defendant were not accompanied by actual malice, intent or ill will.

FIFTH AFFIRMATIVE DEFENSE

46. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged in any sum or sums alleged, which Defendant denies, then Plaintiff's damages are limited by California Civil Code Section 1788.30.

SIXTH AFFIRMATIVE DEFENSE

47. As a separate, affirmative defense, Defendant allege that Defendant's conduct, communications and actions, if any, were privileged.

SEVENTH AFFIRMATIVE DEFENSE

48. As a separate, affirmative defense, assuming arguendo that this Defendant violated a statute alleged in the Complaint, which presupposition the Defendant denies, such violation was

1 not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures
2 reasonably adapted to avoid any such error.

3 **EIGHTH AFFIRMATIVE DEFENSE**

4 49. As a separate, affirmative defense, Defendant alleges that the alleged actions of
5 Defendant was proper and did not violate any provisions of California Civil Code Section 1788, et
6 seq.

7 **NINTH AFFIRMATIVE DEFENSE**

8 50. As a separate, affirmative defense, Defendant alleges that Defendant's conduct,
9 communications and actions, if any, were privileged pursuant to 15 U.S.C. § 1692(k)c).

10 **TENTH AFFIRMATIVE DEFENSE**

11 51. As a separate, affirmative defense, Defendant alleges that if Plaintiff was damaged
12 in any sum or sums alleged, which Defendant denies, then Plaintiff's damages are limited by 15
13 U.S.C. § 1692(k)(a)(1), § 1692(k)(a)(2)(A), § 1692(k)(a)(3) and 15 U.S.C. § 1692(k)(b)(1).

14 **ELEVENTH AFFIRMATIVE DEFENSE**

15 52. As a separate, affirmative defense, Defendant reserves the right to allege and assert
16 any additional and/or further affirmative defenses as become apparent to Defendant during the
17 course of this litigation.

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1 **WHEREFORE**, this answering Defendant prays,

- 2 1. That Plaintiff take nothing by reason of her Complaint;
- 3 2. For judgment in favor of Defendant, and against Plaintiff;
- 4 3. For costs of suit and reasonable attorneys' fees incurred; and
- 5 4. For such other and further relief as the Court may deem just and proper.

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7 DATED: July 7, 2009

CARLSON & MESSER LLP

8

9 By /s/ David J. Kaminski

10 David J. Kaminski

11 Larissa G. Nefulda

12 CARLSON & MESSER LLP

13 Attorneys for Defendants,

14 ERICA L. BRACHFELD and ERICA L.

15 BRACHFELD, A.P.C. erroneously sued as LAW

16 OFFICES OF BRACHFELD & ASSOCIATES,

17 P.C.

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PROOF OF SERVICE

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES) ss.

I am employed in the County of Los Angeles, State of California.

I am over the age of 18 and not a party to the within action; my business address is 5959 W. Century Boulevard, Suite 1214, Los Angeles, California 90045.

On July 7, 2009, I served the foregoing document described as:
DEFENDANT ERICA L. BRACHFELD'S ANSWER TO COMPLAINT on all
interested parties in this action by placing a true copy thereof enclosed in a sealed
envelope addressed as follows:

SEE ATTACHED SERVICE LIST

☒ (BY MAIL)
I sealed such envelope(s) and placed it (them) for collection and mailing on this date following the ordinary business practices of Carlson & Messer LLP. I am "readily familiar" with the business practices of Carlson & Messer LLP for collection and processing of correspondence for mailing with the U.S. Postal Service. Such correspondence would be deposited with the U.S. Postal Service at Los Angeles, California this same day in the ordinary course of business with postage thereon fully prepaid.

☐ (BY FACSIMILE)
I transmitted via telecopier machine such document to the offices of the addressees.

☐ (BY HAND DELIVERY)
I delivered such envelope by hand.

☐ (VIA NEXT DAY FEDERAL EXPRESS)
I delivered the above described documents in the above described envelopes to Federal Express for delivery via FedEx.

☐ (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☒ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed this 7th day of July, 2007 at Los Angeles, California.


Linda Brooks

SERVICE LIST

Mercy Mesiano v. Erica L. Brachfeld and Law
Our File No. 05968.00

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